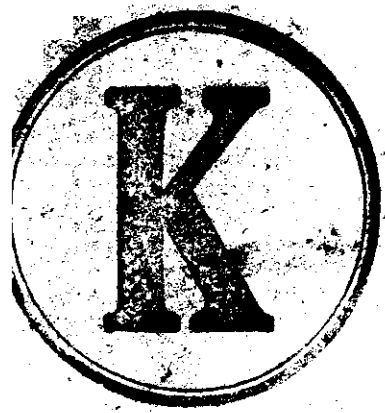




1950

File No. Requisitioned
Land II/50
(IV)

Legal Deptt.

B BRANCH

Subject:— Notifications under the
Requisitioned Land
(Apportionment of Compensation)
Act 1949 and Requisitioned
Land (continuance of powers)
Act 1947

P. 12
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File No.

Requisitioned Land II/50
(IV)

Legal Department.

A requisite draft notification is sent herewith.

24/- J.R.D.

Additional Secretary to Government.

U.R. to P.W.D., No. 3215, dated the 8th March 1950.

44
19/6

NOTIFICATION.

Public Works Department,

Bombay Castle,

1950.

Defence of India
Act, 1939.

No. In exercise of the powers of the Central Government under clause (b) of sub-section (1) of section 19 of the Defence of India Act, 1939 (XXXV of 1939), entrusted to the Provincial Governments by the Government of India, Defence Department, Notification No. 1365-OR/42, dated the 19th September 1942, read with section 2 of the Defence of India (Second Amendment) Ordinance, 1946 (Ordinance No. XII of 1946), the Government of Bombay is pleased to appoint the Chief Judge of the Court of Small Causes, Bombay, as arbitrator to determine the amount of compensation payable in respect of Plot No. 1/11 -T.P.S.1- Vile Parle acquired by the Collector of Bombay Suburban District under his notice of acquisition No. WAR/LAQ-126, dated the 9th June 1943 issued under rule 75-A of the Defence of India Rules.

By order of the Governor of Bombay,

Secretary to Government.

Legal Department.

The property belonging to Shri and Shrimati N.H. Moës admeasuring 8529 square yards bearing N.A. No. 203 and situated in Bandra was requisitioned the Collector, B.S.D. under his office order No. W.A.R. 112 dated the 4th June 1943, at the instance of the Commander, 167-L of C Sub-area and compensation (rent) at the rate of Rs. 800/- per month was being paid to the owners in respect of the same. Subsequently the property was de-requisitioned on 17th February 1947. For the damage done to the above property during the period of Military occupation the party was offered a certain sum. After certain meetings an amicable settlement as regards the compensation regarding the damage was reached and the party accepted Rs. 42,210/- in full settlement of their claim for damage done to the said property. The party at that time put in their claim for additional compensation amounting to Rs. 3,100/- being the fee of the Architects engaged by them for assessing the damage. This claim was however disallowed by the A.D.L.H. & D. service. In this connection, is invited to the letter dated the 23rd September, 1948 from the D.A.D., L.H. & D. service, Bombay Area, to the Collector, Bombay Suburban District wherein he has stated that the Deputy Director at Southern Command has stated that owner's architects fees in this matter cannot be allowed.

He further states that if the claimant insists upon proceeding with the matter his remedy lies in taking the case to a court of law in the normal manner.

2. The party has put in an application for arbitration and in their application has put in their claim for the Architects' fees only in respect of the survey of the said property. The party has accepted Rs. 42,210/- in full settlement of their claim and they have been paid the said amount on the 2nd June 1948. In their application they state that the settlement was made without prejudice to their claim for the Architects' fees which the Lands and Mining authorities disputed on principle. The Collector, B.S.D. has stated in his forwarding letter that since the applicants are not prepared to waive their claim but insist on arbitration the matter may be referred to arbitration. The Revenue Department has prepared a draft notification and has sent that draft for scrutiny. But before the Draft is scrutinised, it will have to be decided whether an arbitrator can be appointed in the circumstances mentioned above.

3. Sub-section (1) of section 19 of the Defence of India Act, 1939 inter alia provides that whereby or under any rule made under this Act any action is taken of the nature described in sub-section (2) of section 299 of the Government of India Act,

1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles, hereinafter set out, that is to say:-

(a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.

(b) Where no such agreement can be reached, the Central Government shall appoint as arbitrator a person qualified under sub-section (3) of section 220 of the Government of India Act 1935 for appointment as a

Judge of a High Court.

4. The provisions of section 19 of the Defence of India Act have been kept alive under section 6 of the Requisitioned Land (Continuance of Powers) Act, 1947 and the appointment of the arbitrator would have to be made there under. But before the appointment is so made R.D. should state whether the agreement for the full amount of Rs. 42,210 which was accepted both by the owner and Govt. has been executed as required by clause (a) of sub-section (1) of sec. 19 of the Defence of India Act and whether the agreement so executed gave him the liberty to put forward a claim in respect of Architects' fees incurred by the owner for assessing damage. The above information is necessary in order to consider whether a part of the claim can be referred to an Arbitrator under the said Act.

Sd/- J.R.Dhurandhar

U.R. to R.D. No. 8042 dated 14th June 1950^{18/6}

Legal Department.

As regards the claims on account of demolition of two sheds and the barbed wire fencing around the land, it was agreed that the claims should be put in when the property has been derequisitioned.

(Vide also condition 3 of the Requisition order which provides that the property shall be restored to the owner as far as possible in the same condition in which it was etc. and if the property has deteriorated, compensation shall be paid in respect of deterioration). The Collector of Bombay has agreed to give compensation for the demolition of two sheds and a barbed wire fencing, but there is no agreement as to the amount. There is no objection to refer the question to the Arbitrator. The Revenue Department draft at p. 51 is not, however, in order as it refers to the Arbitrator, the question of determining compensation in respect of the whole property specified in the Schedule. That is not correct. The question is of determining the compensation payable in respect of the demolition of two sheds and a barbed wire fencing belonging to Messrs. Bhogilal and Coy. during the period during which the lands vesting in them and on which the sheds were constructed stood under requisition under the Order of the Collector of Bombay.

A revised draft notification is sent accordingly.

Sd.
Additional Secretary to Government

U.R. to R.D. No. 8184. Dated 16th June 1950

Revenue Department,

Bombay Castle,

REQUISITIONED LAND
(CONTINUANCE OF
POWERS) ACT, 1947.

No.1571/49.- In exercise of the powers of the Central Government under clause (b) of sub-section (1) of section 19 of the Defence of India Act, 1939 (XXXV of 1939), entrusted to the Provincial Governments by the Government of India, Defence Department Notification No.1365-OR/42, dated 19th September 1942, read with section 6 of the Requisitioned Land (Continuance of Powers) Act, 1947 (XVII of 1947), the Government of Bombay is pleased to appoint the Chief Judge, Court of Small Causes, Bombay, as arbitrator to determine the amount of compensation payable in respect of two sheds and a barbed wire fencing belonging to Messrs. Bhogilala and Co. and demolished during the period during which the property specified in the schedule annexed hereto stood requisitioned under the order of the Collector of Bombay No.GI-Com.I, dated the 26th March 1945 made under sub-rule (1) of rule 76A of the Defence of India Rules.

connection....

Schedule.

Locality	Description of property.	Other Particulars.
1	2	3
Fort Street, Port Trust land opposite the Red Gate of Alexandra Dock.	Vacant land with sheds used for storing marble and tiles. C.S.No.1190 of Fort Division.	Premises belonging to Bhogilal and Company--713 square yards. Vacant land in the occupation of Kishanprasad--area about 200 square yards.

order of the Governor of Bombay

Secretary to Government.

To be published in part IVA of the Bombay Government Gazette; to be returned with 20 copies of the Notification.

Assistant Secretary to Government.

Legal Department.

The facts of the case appear to be that by the Collector of Nasik's Order No.L.N.D./502 (iii), dated the 8th February 1943, issued under Rule 75A of the Defence of India Rules, certain lands in the village of Vadala, District Nasik were requisitioned for Military purposes on behalf of the Government of India. The said lands have not been derequisitioned thereafter. Section 3 of the requisitioned Land (Continuance of Powers) Act, 1947, provides that notwithstanding the expiration of the Defence of India Act, 1939, and the Rules made there under and repeal of the Ordinance, all requisitioned lands shall continue to be subject to requisition until the expiry of this Act and the appropriate Government may use or deal with any requisitioned land in such manner appear to it to be expedient. The expression appropriate Government has been defined in section 2(1) to mean, in relation to any requisitioned land, the Central or Provincial Government by which or under the authority of which the land has been requisitioned. The order under which the land has been requisitioned is not among the papers. But it appears that the land has been requisitioned under the authority of the Central Government. If so the proper authority to acquire the land under section 5 of the Act would be the Central Government which alone was competent to deal

with the said requisitioned land under section 3. It appears from the letter No. 4574/5-C dated the 30th June 1948 at page 79 of H.D. file 4574/5-I that it is the Provincial Government which has directed the Collector of Nasik to acquire the said lands for the purpose of constructing new buildings for Beggar's Homes which are required for implementing the Bombay Beggar's Act. If the facts stated above are proved to be correct on the verification by the Home Department of the order of the Collector of Nasik NO.L.N.D./502(iii), dated the 8th February 1943, the Provincial Government would not be competent to acquire the said lands under section 5 of the Act through the Collector of Nasik. It would be observed that under sub-section (2) of section 5 of the Act, on the issue of a notice for the acquisition of the lands, the said lands from the day on which the notice is published vest absolutely in the Government which has decided to acquire the lands. Before the notification for appointing an arbitrator for determining the amount of compensation payable in respect of the lands acquired under section 5 is scrutinized, it is necessary to know whether the Provincial Government was competent to acquire the land, which if as stated above just before its acquisition, it continued to be requisitioned on behalf of the Central Government, the Provincial Government would not be so competent. The H.D. should therefore verify the facts. ~~XXXXXXXXXX~~

The H.D. should therefore verify the facts.

Sd/- J.R.D.

Additional Secretary to Government.

U.R. to H.D. No. 8250 dated the 16th June 1950.

Office of the R.L.A.

The decision of Kania Acting C.J. in the case of Government of Bombay v. Jivraj M. Shah does not appear to be quite relevant. The architects' fees claimed in that decision were not for surveying the property in the proceedings for compensation with a view to ascertaining the damage done to the property, but the fees in that case were fees which had been paid to the architects by the owner of the property for making plans etc. for erecting a factory thereon which he was prevented from doing by the intervening requisition. Besides, in that case the claim was made very nominal indeed of Rs. 1,000. On the other hand in the case of Rhodes v. Secretary of State for War (1941 All England Reports, Vol. III p. 407), it was held that the expenses of negotiating the compensation to be paid in respect of the requisitioning of a claimant's property on behalf of His Majesty are not as of right recoverable as part of the compensation under the Compensation (Defence) Act, section 2(1)(d), which specifically provided for compensation of a sum equal to the amount of any expenses reasonably incurred otherwise than on behalf of His Majesty for the purpose of compliance with any directions given on behalf of His Majesty in connection with taking possession of land. Section 23 of the Land Acquisition Act which applies to the award of compensation in the present case contains no provision which would warrant the compensation for the fees of architects who surveyed

the property for the purpose of making a claim for compensation. It seems, therefore, that the claim for compensation for architects' fees can be registered.

2. However, the real difficulty in this case has been created by the Discharge Certificate-Lands which incorporates the agreement between the parties and in terms accepts the claim for architects' fees. The exception can be availed of by the claimant for his contention that architects' fees were left out of the agreement as a subject-matter of a dispute which could not be settled. That being so, whatever be the policy of the Military Department it would be difficult now to deny the claimant the opportunity of getting the dispute settled by an arbitrator. There would be no objection in law to refer a part of the claim only to arbitration when the other parts have been amicably settled by an agreement. An arbitrator should, therefore, be appointed, and in the proceedings before him, the contention should be taken that no compensation for such fees can be awarded.

3. A draft notification for the appointment of an Arbitrator is appended hereto.

Sd/- R
Remembrancer of Legal Affairs.

U.R. to R.D. No. 12106, dated the 24th August 1950.